

**ORDER FORM**

Subscriber Name and Address:	Montana Dept of Corrections Centralized Services Division Attn: <del>Jennifer Anders</del> Legal Services PO Box 201301 1539 11 <sup>th</sup> Ave., Helena MT 59620	
Principal Contact Name and Number:	<del>Jennifer Anders</del> (406) 444-5888 <i>DIANA KOCH 406-444-9593</i> <i>DK</i>	
Total Number of DVD Solution Sets:	9	
Fees & Billing Period:	<p>In exchange for access to and use of the DVD Solution Sets, Subscriber will pay the LN Parties the following amounts during the Billing Period identified below:</p> <p>Year 1: \$3550.00 per DVD Solution Set Annually for a total Annual Commitment of \$31,950.00 - See note below for additional month charge in first year of 2 new DVD subs. (not including S&amp;H).</p> <p>Year 2: \$3550.00 per DVD Solution Set Annually for a total Annual Commitment of \$31,950.00 (not including S&amp;H).</p> <p>Year 3: \$3550.00 per DVD Solution Set Annually for a total Annual Commitment of \$31,950.00 (not including S&amp;H).</p> <p>Subscriber shall pay the fees set forth above beginning the month during which the DVD Solution Sets are delivered to Subscriber and continuing for thirty-five months (the "Billing Period").</p>	
Delivery Address For Each DVD Solution Set and Contact Name	Maximum Number of Workstations For This Location	
Montana Dept of Corrections	9	
Centralized Services Division <del>Jennifer Anders</del>		
Legal Services		
PO Box 201301 1539 11 <sup>th</sup> Ave		
Helena, MT 59620		
<p><b>Complete Description of Law Library Information on DVD Solution:</b></p> <p><u>MT Statutes, MT Judicial Decisions, MT Atty General Opinions, MT Admin Code, US Code Law Desk-Title 28 and 42, Decisions of the US Court Appeals 9<sup>th</sup> Circuit, Decisions of the US District Court 9<sup>th</sup> Circuit, Cases both published and unpublished "as available" and Shepard's MT and Federal Citations.</u></p> <p><u>The current 7 DVD subscriptions will be renewed at \$3,550.00 per subscription per year for a 3 year period. The subscriptions will run January 1, 2006 thru December 2008.</u></p> <p><u>The 2 new DVD subscriptions will be \$3,550.00 per subscription per year. The 2 new DVD subscriptions will have a term starting in December 2005 and will run thru December 2008. Due to the 13 month service period for the 2 new DVD subscriptions for year 1, there will be an additional 1 month charge for year 1 for these 2 subs. The additional charge is \$295.83/month/DVD sub for a total of \$591.66. This additional 1 month charge will only be added to the first year in order to co-term the 2 new subs with the original 7 already on subscription.</u></p> <p><u>Shipping and Handling charges for all 9 DVD subscriptions are as follows: \$31.10 per subscription per year for a total of \$839.70 for all 9 subscriptions and their corresponding 36 month terms. (We will not charge additional S&amp;H fees for the additional month of the first year of the 2 new subscriptions.) The Grand Total of this DVD order is \$96,441.66 plus \$839.70 for Shipping &amp; Handling which equals</u></p> <p><u>\$97,281.36.</u></p> <p>****Note: Section 3.3 of this contract does not pertain to the customer Montana Department of Corrections noted</p>		

under Subscriber Name and Address on page one of this  
contract.\*\*\*\*

This LexisNexis Matthew Bender DVD Prison Solution Agreement ("Agreement") is entered into as of the date set forth in the Order Form and is between LexisNexis, a division of Reed Elsevier Inc. ("LN"), and Matthew Bender & Company, Inc. ("MB" and MB together with LN, the "LN Parties"), on the one hand, and Montana Dept of Corrections, a correctional institutional in the State of Montana ("Subscriber"), on the other hand.

**1. Definitions.**

1.1 "Authorized Users" means each of the civilian librarians and inmates at Subscriber's facility who are authorized by Subscriber to access and use the DVD Solution.

1.2 "DVD Solution" means the set of one or more DVDs provided by the LN Parties to Subscriber that contains the Law Library Information.

1.3 "Law Library Information" means the legal content that is owned or licensed by the LN Parties that is contained on the DVD Solution as the same is described in detail on the Order Form.

**2. Services.**

During the Term, the LN Parties will provide Subscriber and its Authorized Users with access to and use of the DVD Solution. The number of copies of the DVD Solution and the delivery locations for such DVD Solutions shall be set forth on Order Form.

**3. Term of Agreement; Termination.**

3.1 The Term of this Agreement is set forth on the Order Form which is attached hereto and incorporated herein by reference.

3.2 Either the LN Parties, on the one hand, or Subscriber, on the other hand, may terminate this Agreement for a material breach. Prior to exercising such right of termination, the non-breaching party must first provide the breaching party with thirty (30) days prior written notice setting forth with specificity the nature of the breach (the "Breach Notice"). If such breach remains uncured thirty (30) days after the Breach Notice is given, the non-breaching party may terminate immediately upon written notice.

3.3 The LN Parties may terminate this Agreement immediately upon written notice to Subscriber in the event: (i) that the subcontracting agreement between LN and Touch Legal expires or is terminated, (ii) Touch Legal becomes insolvent or makes an assignment for the benefit of creditors, or (iii) Touch Legal is unable or fails to perform the services that are required of Touch Legal in order for the LN Parties to perform their obligations hereunder.

3.4 The LN Parties retain ownership of the DVD Solution. Upon termination of this Agreement, at the direction of the LN Parties, Subscriber will either cease all use of and destroy the DVD Solution, or return the DVD Solution to the LN Parties at LexisNexis, 701 East Water Street, Charlottesville, Virginia 22902.

**4. Pricing; Payment Terms.**

4.1 In exchange for access to and use of the DVD Solution, Subscriber will pay the LN Parties the charges set forth on the Order Form (the "Fees"). The Fees set forth on the Order Form include all charges for shipping and handling.

4.2 MB will serve as LN's billing agent during the Term. MB will provide Subscriber with one consolidated invoice for the DVD Solution which shall be provided to Subscriber on the terms set forth in the Order Form. Subscriber will pay the Fees to MB and MB will remit to LN that portion of the Fee that is due to LN under

this Agreement. Subscriber will have thirty (30) days to pay each invoice. Amounts which have not been paid within 30 days after the invoice date are thereafter until paid subject to a late payment charge at a rate equal to 15% per annum (or, if less, the maximum rate permitted under applicable law). Additionally, the LN Parties shall have the right to terminate this Agreement and retain all sums paid by Subscriber. Subscriber shall be responsible for the LN Parties' collection costs including, but not limited to, collection agency fees, reasonable attorneys' fees and court costs. The LN Parties retain a purchase money security interest in the DVD Solution.

4.3 In the event this is a multi-year contract and sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, Subscriber will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to Subscriber in the event this provision applies.

## 5. License Terms.

5.1 Each Authorized User of Subscriber is granted a non-exclusive, non-transferable limited license to access and use the DVD Solution for legal research purposes. The license generally includes the following for each Authorized User:

(a) The right to electronically display Law Library Information retrieved from the DVD Solution to no more than one person at a time;

(b) The right to obtain a printout of Law Library Information via the printing commands of the DVD Solution and to create a single printout of Law Library Information downloaded via downloading commands of the DVD Solution ("Authorized Printouts");

(c) The right to retrieve via downloading commands of the DVD Solution and store in machine-readable form, primarily for one person's exclusive use, a single copy of insubstantial portions of Law Library Information included in any individual file; and

(d) To the extent permitted by applicable copyright law, the right to make copies of Authorized Printouts and distribute Authorized Printouts and copies.

5.2 Except as specifically provided in Section 5.1, Authorized Users are prohibited from downloading, storing, reproducing, transmitting, displaying, copying, distributing, or using Law Library Information retrieved from the DVD Solution. You may not print or download Law Library Information without using the printing commands of the DVD Solution.

5.3 Subscriber may not allow anyone other than the Authorized Users to use the DVD Solution. Subscriber may not, nor may Subscriber permit others (including, without limitation, the Authorized Users) to:

(a) Remove or obscure any copyright notice or other notice or terms of use contained in DVD Solution or the Law Library Information.

(b) Use the DVD Solution or Law Library Information in any fashion that may infringe any copyright, intellectual property right, or proprietary or property right or interest of LN or its contractors or content suppliers;

(c) Use the DVD Solution or Law Library Information to develop a database, infobase, online or similar database service, or other information resource in any media (print, electronic or otherwise, now existing or developed in the future) for sale to or use by others; or

(d) Copy, reverse engineer, decompile, disassemble, derive source code, modify or prepare derivative works of the DVD Solution.

5.4 Subscriber shall, at all times during the term of this Agreement, post the full text of the General Terms

and Conditions for Use of the DVD Solution attached hereto as Schedule A, the terms of which are incorporated herein by reference, on each computer workstation upon which the DVD Solution is operated. In the event of a conflict between the terms set forth in Schedule A and the terms set forth in this Agreement, the terms of Schedule A shall control as between the LN Parties and the Authorized Users and the terms set forth in this Agreement shall control as between the LN Parties and Subscriber.

5.5 Subscriber shall promptly notify the LN Parties of any unauthorized use of the DVD Solution and shall cooperate fully with LN in any resulting legal action.

5.6 The DVD Solution and Law Library Information and any copyrights, trademarks, patents, trade secrets, intellectual property rights and other proprietary rights in and to the DVD Solution and Law Library Information are owned by the LN Parties and/or their contractors and content suppliers. Subscriber obtains no right, title or interest in the DVD Solution other than the limited license set forth herein.

5.7 The technology used in the DVD Solution is a trade secret. Subscriber shall maintain any information learned about that technology as a trade secret and shall not disclose such information or permit such information to be disclosed to any person or entity; however, this sentence shall not restrict Subscriber in training its Authorized Users in the ordinary use of the DVD Solution.

## 6. Warranty.

6.1 The LN Parties represent and warrant that they have the right and authority to make the DVD Solution available on the terms set forth herein.

6.2 EXCEPT AS EXPRESSLY STATED IN SECTION 6.1, THE LN PARTIES MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DVD SOLUTION OR THE ACCURACY OR THE COMPLETENESS OF THE LAW LIBRARY INFORMATION. THE DVD SOLUTION AND LAW LIBRARY INFORMATION ARE FURNISHED ON AN "AS IS", AS-AVAILABLE BASIS. ALL WARRANTIES OF ANY TYPE NOT EXPRESSLY STATED IN THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

## 7. Remedies.

7.1 In the event there is a breach of warranty under Section 6.1, the LN Parties shall, as their sole obligation and Subscriber's exclusive remedy, defend or, at their option, settle any action or proceeding of any kind or description based upon a third party's claim of patent, trademark, servicemark, copyright or trade secret infringement, related to use of the DVD Solution (excluding any decisions or advice made or given as a result of the use of or reliance upon the Law Library Information) provided by the LN Parties asserted against Subscriber by such third party provided: (i) all use of the DVD Solution was in accordance with this Agreement; (ii) the claim, cause of action, or infringement was not caused by Subscriber or its Authorized Users; (iii) the LN Parties are given prompt notice of any such claim; and (iv) the LN Parties have the right to solely control and direct the investigation, defense and settlement of each such claim. Subscriber, at the expense of the LN Parties, shall reasonably cooperate with the LN Parties in connection with the foregoing. If notified promptly in writing of any claim, demand, or judicial action brought against Subscriber based on an allegation that its use of the DVD Solution constitutes infringement, the LN Parties will jointly and not severally pay the costs, including reasonable attorney fees, associated with resolving such claim and will pay the judgment or settlement amount (if any).

Should the DVD Solution or the operation thereof become, or in the opinion of the LN Parties be likely to become, the subject of a claim of infringement, Subscriber shall permit the LN Parties, at their sole option and expense, either (i) to procure for Subscriber the right to continue using the DVD Solution, (ii) to replace or modify the same so that it becomes non-infringing; or (iii) terminate Subscriber's use of the DVD Solution upon notice to Subscriber and grant Subscriber a pro-rata refund or credit (whichever is applicable) for any pre-paid fees or fixed charges.

7.2 The LN Parties shall have no responsibility to Subscriber under this Section 7 with respect to any use

of the DVD Solution in a manner not authorized by this Agreement; or for any abuse or modification of the DVD Solution by Subscriber or its Authorized Users.

8. Limitation of Liability.

ANY LIABILITY OR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION, SHALL IN ALL CASES, WHETHER IN ONE CLAIM OR IN MULTIPLE CLAIMS, BE LIMITED TO THE TOTAL PAYMENTS MADE BY SUBSCRIBER TO THE LN PARTIES FOR THE DVD SOLUTION PROVIDED BY THE LN PARTIES HEREUNDER DURING THE PREVIOUS TWELVE (12) MONTHS. IN NO EVENT WILL THE LN PARTIES HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN STATUTE, TORT, STRICT LIABILITY, CONTRACT, BREACH OF WARRANTY OR OTHERWISE AND NOTWITHSTANDING ANY FAULT OR NEGLIGENCE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, DATA, BUSINESS OR GOODWILL, EVEN IF THE LN PARTIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LN PARTIES ALSO SHALL NOT BE LIABLE FOR, AND SHALL BE EXCUSED FROM, ANY FAILURE TO PERFORM OR DELAY IN PERFORMANCE DUE TO CAUSES BEYOND THEIR REASONABLE CONTROL, INTERRUPTIONS OF POWER OR TELECOMMUNICATIONS SERVICES, ACT OF WAR, TERRORISM OR NATURE, GOVERNMENTAL ACTIONS, FIRE, FLOOD, NATURAL DISASTERS OR SIMILAR EVENTS.

WE DISCLAIM ALL WARRANTIES WITH RESPECT TO THE LEGAL RESEARCH SERVICES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM A COURSE OF DEALING. WE DO NOT WARRANT THE ACCURACY, RELIABILITY OR CURRENTNESS OF THE MATERIALS CONTAINED IN THE LEGAL RESEARCH SERVICES. WE WARRANT THE LEGAL RESEARCH SERVICE WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF 30 DAYS. YOUR EXCLUSIVE REMEDY AND OUR SOLE OBLIGATION WITH RESPECT TO A DEFECTIVE LEGAL RESEARCH SERVICE WILL BE THE RIGHT TO RETURN THE DEFECTIVE LEGAL RESEARCH SERVICE FOR A REPLACEMENT COPY AT NO ADDITIONAL CHARGE.

9. Customer Support.

At no additional charge, the LN Parties will provide Subscriber with telephonic customer support regarding the DVD Solution at 1-866-293-4261. The LN Parties will also replace defective DVD Solutions at no cost to Subscriber.

10. Miscellaneous.

10.1 In the event of a conflict between the terms and conditions embedded on the DVD Solution and the terms and conditions in this Agreement, the terms and conditions embedded on the DVD Solution shall control.

10.2 If the LN Parties accept an order for a DVD Solution on a purchase order issued by Subscriber ("PO"), the terms and conditions of the PO are for Subscriber's internal purposes only and shall in no way modify or affect the terms of this Agreement.

10.3 This Agreement, including the Order Form and Schedule A, contains the entire agreement between the parties with respect to the subject matter hereof, and may be amended only by a writing signed by both parties. Notwithstanding the foregoing, the LN Parties may change the license terms set forth in Section 5 or Schedule A immediately upon written notice to Subscriber. Subscriber's continued use of the DVD Solution following notice of the change shall constitute its acceptance of the change.

10.4 The failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

10.5 If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction under any applicable statute or rule of law, such provision shall be ineffective to the extent of

such invalidity or unenforceability without affecting the validity or unenforceability of the remainder of this Agreement. In addition, the parties will endeavor, in good faith, to replace any such provision with a valid or enforceable one that most closely embodies the original intentions of the parties.

10.6 The section headings in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

10.7 All notices and other communications under the Agreement shall be in writing. Notices shall be deemed given on the date deposited in the U.S. mail, if mailed; or on the date received, if delivered in any other manner. Notices to the LN Parties shall be sent to your account representative with a copy to: LexisNexis, 9443 Springboro Pike, Miamisburg, OH 45342, Attn: Office of the General Counsel.

10.8 Subscriber is prohibited from assigning its rights or delegating its duties without the LN Parties' prior written consent.

10.9 The Agreement shall be governed by and construed in accordance with the laws of the State in which Subscriber is located, as such State's laws apply to contracts made and solely performed therein.

10.10 The following sections of this Agreement shall survive termination or expiration of the Agreement for any reason: Sections 7 and 8.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

**AGREED TO AND ACCEPTED BY:**

Montana Department of Corrections  
SUBSCRIBER  
BY: Steve Duke for  
NAME: Bill Slaughter  
TITLE: DIRECTOR  
DATE: 12-22-05

**LexisNexis, a division of Reed Elsevier Inc.  
("LN")**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**Matthew Bender & Company Inc. ("MB")**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## **SCHEDULE A**

### **GENERAL TERMS AND CONDITIONS FOR USE OF THE LEXISNEXIS® DVD SOLUTION**

#### **Effective May 1, 2005**

The following terms and conditions govern your use of this law library research system on DVD-Rom (the "DVD Solution") and the materials available therein ("Law Library Information"):

#### **1. LICENSE; RESTRICTIONS ON USE**

1.1 You are granted a non-exclusive, non-transferable limited license to access and use the DVD Solution for legal research purposes. The license includes the following:

(a) The right to electronically display, on the DVD Solution, Law Library Information retrieved from the DVD Solution to no more than one person at a time;

(b) The right to obtain printouts of Law Library Information via the printing commands of the DVD Solution and to create a single printout of Law Library Information downloaded via downloading commands of the DVD Solution ("Authorized Printouts");

(c) The right to retrieve via downloading commands of the DVD Solution and store in machine-readable form, primarily for one person's exclusive use, a single copy of insubstantial portions of Law Library Information included in any individual file; and

(d) To the extent permitted by applicable copyright law, the right to make copies of Authorized Printouts and distribute Authorized Printouts and copies.

1.2 Except as specifically provided in Section 1.1, you are prohibited from downloading, storing, reproducing, transmitting, displaying, copying, distributing, or using Law Library Information retrieved from the DVD Solution. You may not print or download Law Library Information without using the printing commands of the DVD Solution.

1.3 You are not permitted to:

(a) Remove or obscure any copyright notice or other notice or terms of use contained in the DVD Solution or Law Library Information.

(b) Use the DVD Solution or Law Library Information in any fashion that may infringe any copyright, intellectual property right, or proprietary or property right or interest of LexisNexis, a division of Reed Elsevier Inc., a Massachusetts corporation, ("LexisNexis") or its contractors or content suppliers;

(c) Use the DVD Solution or Law Library Information to develop a database, infobase, online or similar database service, or other information resource in any media (print, electronic or otherwise, now existing or developed in the future) for sale to or use by others; or

(d) Copy, reverse engineer, decompile, disassemble, derive source code, modify or prepare derivative works of the DVD Solution or Law Library Information.

#### **2. PROPRIETARY RIGHTS**

2.1 The DVD Solution and Law Library Information and any copyrights, trademarks, patents, trade secrets, intellectual property rights and other proprietary rights in and to the DVD Solution and Law Library Information are owned by LexisNexis and its contractors and content suppliers. You acquire no proprietary interest in the DVD Solution, Law Library Information, or copies thereof.

#### **3. DISCLAIMER OF WARRANTIES**

3.1 THE DVD SOLUTION AND LAW LIBRARY INFORMATION ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND LEXISNEXIS AND EACH THIRD PARTY SUPPLIER OF MATERIALS EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **4. LIMITATION OF LIABILITY**

4.1 A Covered Party (as defined below) shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from (a) any errors in or omissions from the DVD Solution or any Law Library Information available or not included therein, (b) the unavailability or interruption of the DVD Solution or any features thereof or any Law Library Information, (c) your use of the DVD Solution or Law Library Information (regardless of whether you received any assistance from a Covered Party in using the DVD Solution), (d) your use of any equipment in connection with the DVD Solution, (e) the content of the Law Library Information, or (f) any delay or failure in performance beyond the reasonable control of a Covered Party.

4.2 "Covered Party" means (a) LexisNexis, its affiliates including Matthew Bender, and any officer, director, employee, subcontractor, agent, successor, or assign of LexisNexis or its affiliates; and (b) each third party supplier of Law Library Information, their affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any third party supplier of Law Library Information or any of their affiliates.

4.3 THE AGGREGATE LIABILITY OF THE COVERED PARTIES IN CONNECTION WITH ANY OTHER CLAIM ARISING OUT OF OR RELATING TO THE DVD SOLUTION OR LAW LIBRARY INFORMATION SHALL NOT EXCEED THE AMOUNT OF YOUR ACTUAL DIRECT DAMAGES. YOUR RIGHT TO MONETARY DAMAGES IN THAT AMOUNT SHALL BE IN LIEU OF ALL OTHER REMEDIES WHICH YOU MAY HAVE AGAINST ANY COVERED PARTY.

4.4 THE COVERED PARTIES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THE DVD SOLUTION, LAW LIBRARY INFORMATION, OR THE FAILURE OF ANY COVERED PARTY TO PERFORM ITS OBLIGATIONS, REGARDLESS OF ANY NEGLIGENCE OF ANY COVERED PARTY.

#### **5. MISCELLANEOUS**

5.1 These General Terms and Conditions may be changed from time to time, by LexisNexis immediately upon notice.

5.2 LexisNexis may suspend or discontinue providing the DVD Solution to you without notice and pursue any other remedy legally available to it if you fail to comply with any of your obligations hereunder.

5.3 Except as otherwise provided herein, all notices and other communications hereunder shall be in writing or displayed physically on or near, or electronically in, the DVD Solution.

5.4 The failure of LexisNexis or any third party supplier of Law Library Information to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

5.5 These General Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Ohio.

5.6 Each third party supplier of Law Library Information has the right to assert and enforce these provisions directly on its own behalf as a third party beneficiary.